

**United States Department of Labor
Employees' Compensation Appeals Board**

J.N., Appellant

and

**DEPARTMENT OF STATE, U.S. EMBASSY,
Kabul, Afghanistan, Employer**

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**Docket No. 17-1408
Issued: December 11, 2017**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

On June 14, 2017 appellant, through counsel, filed an appeal of a decision of the Office of Workers' Compensation Programs (OWCP) dated April 4, 2017. The appeal was docketed as No. 17-1408.

The Board has reviewed the record and finds that the case must be remanded to OWCP.

By decision dated December 9, 2016, an OWCP hearing representative had properly directed OWCP to further develop issues presented in the case. Appellant, a construction manager, had filed a traumatic injury claim alleging he sustained an injury to his left knee on April 10, 2015 while walking down a concrete ramp. He was working at the U.S. Embassy in Kabul, Afghanistan.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; see also 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

In the December 9, 2016 decision, the hearing representative indicated there was a preliminary issue of whether appellant was an independent contractor or federal employee. The relevant provisions of OWCP's procedure manual were noted and the specific elements that must be considered to make a proper determination on the issue.² The hearing representative further indicated that, if OWCP determined appellant was an employee under 5 U.S.C. § 8101(1), then OWCP must properly determine if appellant was in the performance of duty at the time of the alleged injury on April 10, 2015. It was noted that the nature of the activity, as well as whether appellant was in travel status, must be considered.

The April 4, 2017 OWCP decision failed to make adequate findings on the issues presented. In the "discussion of evidence" portion of the decision, OWCP simply listed some of the evidence received, without discussing the content of same. OWCP then denied modification with respect to the claim, finding that appellant was not in travel status based on temporary duty travel authorization. There were no findings, nor was there discussion on the issue of whether appellant was an employee under 5 U.S.C. § 8101(1). If OWCP is finding that appellant was an employee, it should make that finding and discuss the relevant evidence on the issue. Moreover, if OWCP holds that appellant was an employee who was not in the performance of duty, it must make adequate findings. There is no review of the evidence submitted regarding the April 10, 2015 incident, or the relevant legal precedent with respect to the nature of the activity and travel status.

In deciding matters pertaining to a given claimant's entitlement to compensation benefits, OWCP is required by statute and regulation to make proper findings of fact.³ OWCP procedure further specifies that a final decision of OWCP should be clear and detailed so that the reader understands the reasons for the disallowance of the benefit.⁴ These requirements are supported by Board precedent.⁵

The case will be remanded to OWCP for a proper decision on the issues presented. After such development as is necessary, OWCP should issue an appropriate decision.

² See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Civil Employee*, Chapter 2.0802.6 (June 1998).

³ 5 U.S.C. § 8124(a) provides that OWCP shall determine and make a finding of facts and make an award for or against payment of compensation. 20 C.F.R. § 10.126 provides in pertinent part that the final decision of OWCP shall contain findings of fact and a statement of reasons.

⁴ See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Disallowances*, Chapter 2.1400.5 (February 2013).

⁵ See *James D. Boller, Jr.*, 12 ECAB 45, 46 (1960); see also *R.B.*, Docket No. 16-1696 (issued September 7, 2017).

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 4, 2017 is set aside and the case remanded to OWCP for further action consistent with this order of the Board.

Issued: December 11, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board